

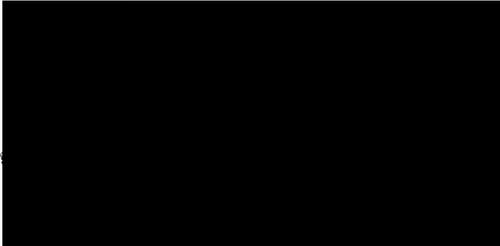
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



*IL2*

FILE:



Office: NEBRASKA SERVICE CENTER

(LIN-03-194-52778 relates)

MAY 24 2005  
Date:

IN RE:

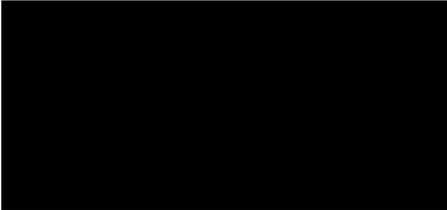
Applicant:



APPLICATION:

Application for Travel Document Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. § 1203.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan who seeks to obtain a travel document (reentry permit) under section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1203. The Acting Director denied the application after determining that the application was filed after the applicant had departed the United States. See *Acting Director's Decision* dated January 7, 2005.

In pertinent part, section 223 of the Act provides that an alien lawfully admitted for permanent residence who intends to travel abroad and return to the United States to resume that status may make an application for a permit to reenter the United States.

The regulation at 8 C.F.R. § 223.2 states in pertinent part:

(b) Eligibility.

(1) Reentry permit. Except as otherwise provided in this section, an application may be approved if filed by a person who is in the United States at the time of application and is a lawful permanent resident or conditional permanent resident.

The regulation at 8 C.F.R. § 103.2 states in pertinent part:

Applications, petitions, and other documents.

(a) *Filing-(1) General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. The form must be filed with the appropriate filing fee required by § 103.7. . .

...

(7) *Receipt date-(i) General.* An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 or part 245a of this chapter, shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date . . .

The record of proceeding reveals that the applicant is a lawful permanent resident of the United States. The applicant signed a Form I-131, which was subsequently mailed to the Nebraska Service Center and received on June 5, 2003. On August 5, 2004, the Acting Director requested that the applicant provide evidence to establish his actual date of departure from the United States. The applicant responded and the evidence indicates that the applicant departed the United States on May 15, 2003.

On appeal counsel does not dispute the fact that the application was filed after the applicant departed the United States but states that he should not be punished due to a mistake made by counsel. According to counsel the applicant made every effort to file an Application for Travel Document (Form I-131) prior to his departure from the United States. The applicant signed a Form I-131 and a Notice of Entry of Appearance as Attorney or Representative (Form G-28) prior to his departure and left them with his attorney to be forwarded to the Nebraska Service Center. The application was subsequently mailed to Citizenship and Immigration Services (CIS) and was received by the Nebraska Service Center on June 5, 2003. In his brief counsel refers to the regulation at 8 C.F.R. § 223.2(e) that states in pertinent part that the approval of an application is solely at the discretion of the Service and requests that the Service exercise discretion and approve the Form I-131.

Counsel's statements are not persuasive. The regulation at 8 C.F.R. § 223.2(e) refers to the processing of Form I-131 after it has been filed. As noted above a Form I-131 may be approved if filed by a person who is in the United States at the time of application. An application shall be regarded as properly filed when it is received, signed and accompanied by the required filing fee. The Form I-131 was not filed until June 5, 2003. In addition the instructions on Form I-131 state in pertinent part: "You must be physically present in the United States when you file the application. . ." and therefore the applicant and counsel should have been aware of the filing requirement. The AAO notes that both the Form I-131 and the Form G-28 are not dated. Since the applicant was not physically present in the United States when he filed his application for a reentry permit the application may not be approved.

Counsel further states that if the applicant had known that the processing time for the Form I-131 would have been so lengthy he would have returned to the United States within six months of his departure. Furthermore counsel states that it would cause extreme hardship to the applicant if he were required to apply for a SB-1, returning resident visa.

The record of proceedings in this case relates to the denial of the Form I-131 and the AAO will not address the backlog or the processing time it took the Service Center to contact the applicant or the applicant's eligibility for an SB-1 visa. The applicant departed the United States without a reentry permit and should have contacted the American Embassy in Pakistan to inquire about the time permitted to remain outside the United States without jeopardizing his lawful permanent resident status.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.